

***United States Court of Appeals
for the Second Circuit***



PETITION

In The

74-1611

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-1411

B

REA EXPRESS, INC.,

Appellant,

v.

CIVIL AERONAUTICS BOARD,

Appellee.

P/S

AIR EXPRESS SERVICE, AIR FREIGHT FORWARDERS ASSO-
CIATION, AMERICAN RETAIL FEDERATION, BROTHERHOOD
OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, NATIONAL
SMALL SHIPMENTS TRAFFIC CONFERENCE, DRUG AND TOILET
PREPARATION TRAFFIC CONFERENCE AND EASTERN
INDUSTRIAL TRAFFIC LEAGUE,

Intervenors.

Petition for Review of an Order of
the Civil Aeronautics Board

BRIEF OF BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYEES

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July 29, 1974

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NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, DRUG
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ISSUE PRESENTED FOR REVIEW

WHETHER THE CIVIL AERONAUTICS BOARD GAVE PROPER
CONSIDERATION TO THE PUBLIC INTEREST EFFECT OF ITS ORDER AND
ITS EFFECT UPON APPELLANT'S EMPLOYEES.

ARGUMENT

POINT I

THE CIVIL AERONAUTICS BOARD FAILED TO GIVE PROPER CONSIDERATION TO THE PUBLIC INTEREST EFFECT OF ITS ORDER IN FAILING TO MAKE SUITABLE LABOR PROTECTIVE PROVISIONS.

The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an Intervenor in this appeal, represents employees of REA Express, Inc. (REA), the Appellant herein. There are some 15,000 individuals represented by BRAC.

The overriding interest of BRAC in this appeal is that of protecting the jobs and livelihood of some 15,000 persons who are at present employees of REA.

If the Order of the Civil Aeronautics Board (CAB) under review by this Court is upheld on the appeal, it is apparent from the data supplied by REA to this Court that REA may suffer a fatal blow. If the Order of CAB is upheld, REA claims that it stands to lose up to 40% of its total corporate revenues. This loss will probably cause REA to fall rather quickly into a financial situation which would lead to bankruptcy.

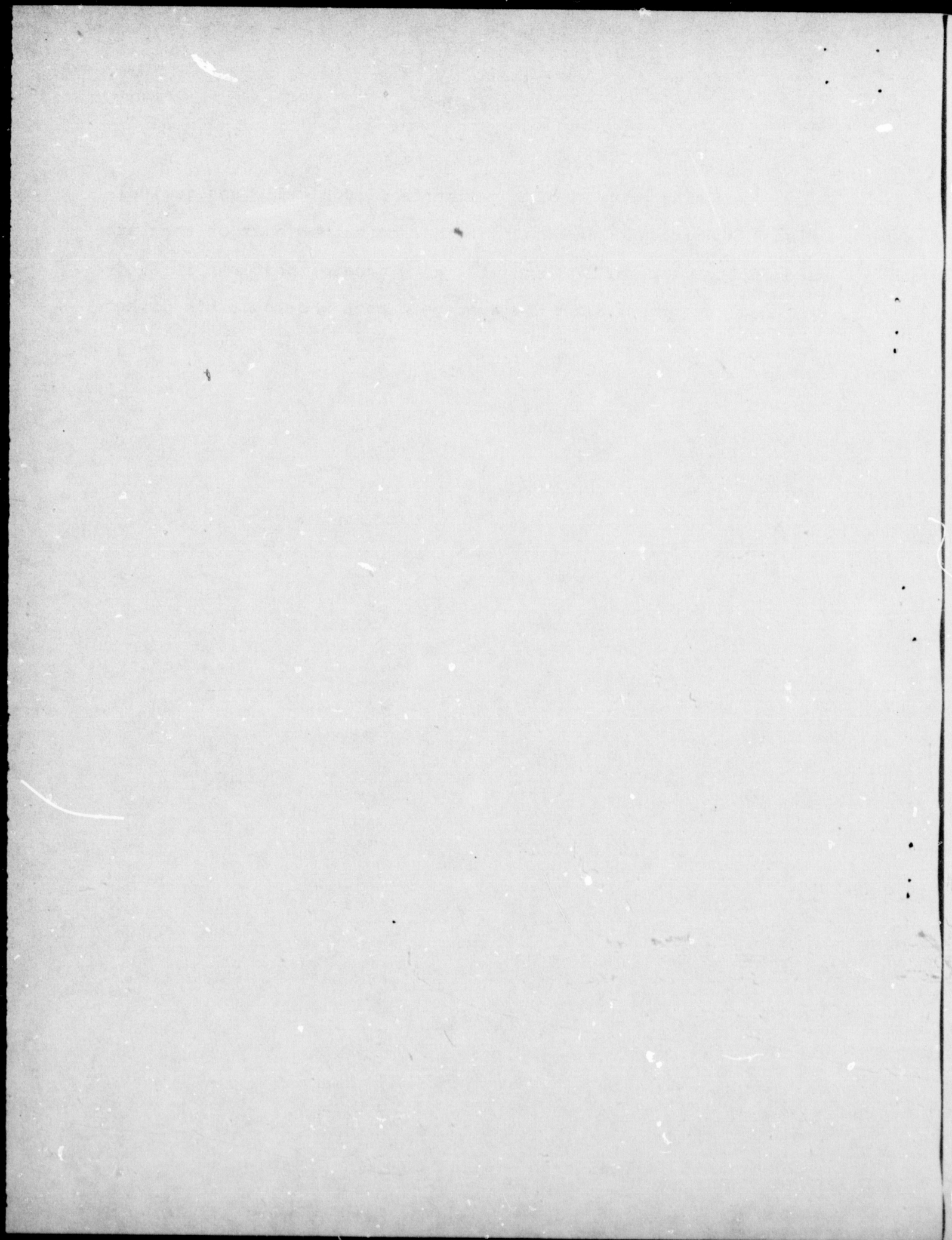
It is an obligation of the Civil Aeronautics Board to take into account and give serious consideration to the

effect its orders have upon the employees of REA. In this connection it should be noted that BRAC, on April 16, 1974, sought leave of the Civil Aeronautics Board to file an answer in support of the position of REA so as to forcefully demonstrate to the CAB the effect its order would have on this great number of employees. This request by BRAC was denied by the CAB.

The CAB deals with its summary denial of BRAC's request to offer information and proof of this possible addition of 15,000 persons to the growing numbers of unemployed persons in this country in Footnote 22 on page 18 of CAB Order 75-5-25. In that footnote CAB merely states that it considered the impact of its Order on the employees and found that the "net impact on the industry's employees would be a favorable one." This is merely a supposition and not in any way substantiated by the CAB.

CAB gave no consideration to providing suitable labor protective provisions as it could and should have done. Kent v. CAB, 204 F.2d 263 (2d Cir. 1953) cert. den. 346 U.S. 826 (1953); Seven States Area Investigation, 30 CAB 473, 474 (1959). Rather, CAB looked into its crystal ball and found therein some indication that the "net impact" would be a good one on some persons in the industry. This vision is not supported by any evidence it refers to nor by any findings of fact. It is respectfully suggested that this vague economic crystal ball is a poor substitute for the clear and convincing findings of fact it should have made in order to come to such a conclusion.

The problem of Appellant's 15,000 employees is additionally aggravated by the fact that more than half of them are over fifty years of age and will have greater problems in finding new employment than the average person who loses his or her job.



CONCLUSION

The lack of serious consideration by the Civil Aeronautics Board of the impact on the Appellant's 15,000 employees makes it clear that the CAB did not give the requisite consideration to the public interest effect of its Order, and for that reason alone it is submitted that the Order should be reversed or vacated.

Respectfully submitted,

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STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

PAUL G. REILLY, JR., being duly sworn, deposes and says that on the 29th day of July, 1974, he served the foregoing BRIEF OF BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES upon the petitioner, the respondent and all parties who have been granted the status of Intervenor in this case before the United States Court of Appeals for the Second Circuit, by causing two copies to be mailed in the United States Mail, postage prepaid, to/said each of parties at the addresses appearing below.

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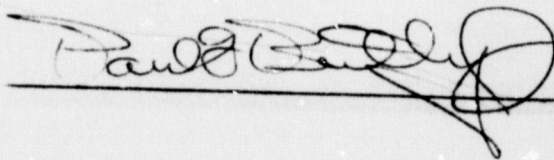
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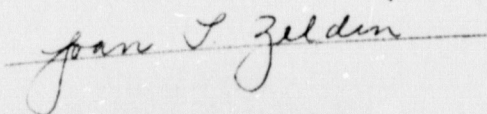
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*Sworn to before me
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Notary Public, State of New York
No. 81-4511016
Qualified in New York County
Commission Expires March 30, 1975